IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

Cr. Appeal No. 653 of 2000

Date of Decision : 12.11.2007

State of H.P. …Appellant.

Versus:

Chiranji Lal and others …Respondent.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No.*

For the appellant: Mr. Virender Kumar Verma, Addl. Advocate General.

For the respondent : Mr. R.K.Gautam, Sr.Advocate with Mr. N.K.Bhardwaj, Advocate.

Sanjay Karol, J. (Oral).

The present appeal arises out of judgement dated 15.7.1999 passed by the Additional Chief Judicial Magistrate, Paonta Sahib, Distt. Sirmour, H.P. in Criminal case No. 133/2 of 97/96, titled as State of H.P. vs. Chiranji Lal and others, acquitting the accused of the charged offences.

As per the case of the prosecution on 29.8.1996, at about 3.00 A.M, complainant Gurnam Singh (PW-1) lodged a report Ext.PW-8/A with Police Station, Nahan, H.P. that on 28.8.1996 at about 2.00 P.M he was carrying grass and coming

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

back home from the fields when he met one Vijay Kumar son of Bhola Ram who was grazing his buffalos near the canal. Since his passage was totally blocked he asked Vijay Kumar to remove the buffalos. Since Vijay Kumar refused to do so, therefore, to make his way he pushed the buffalos aside and proceeded towards his house. After some time, accused Surjeet Kaur, Bhola Ram, Vijay Kumar and Gita Devi came to the house of the complainant with "Dandas" (sticks) and inquired as to why their buffalos were beaten. Even though it was clarified that no buffalo had been beaten by any person but the said person gave beatings to the complainant and his father Gita Ram PW-2. Thereafter, complainant (PW-1) and his brother Khem Chand alongwith PW-2 were on their way to a place known as Paonta to report the matter to the police when upon reaching a place called Giripul accused Simru Ram, Ramesh Chand, Gian Chand, and Chiranji Lal after obstructing their passage started abusing PW-1. The said persons also gave beatings to PW-2. When PW-1 tried to rescue his father, accused Ramesh Chand also hit him with a Danda on his head. Both the complainant and his father suffered injuries. On the basis of the said report FIR Ext.PW-9/D bearing No. 334/96 was registered on 29.8.1996 at 1.50 P.M with Police Station Paonta Sahib. H.C. Subhash Chand (PW-9) investigated the matter and site plan Ext.PW9/A was prepared by him. He took into possession the weapons of offence "Dandas" Ext.P1 to P-5 vide seizure memo Ext.PW5/A to Ext.PW-5/C in the presence of witnesses. The injured persons were got medically examined through Dr. Sanjay Sharma (PW-6) vide

MLC Ext.PW-6/A and Ext.PW-6/B. Statements of the witnesses were recorded and with the completion of the investigation the challan was presented in the Court for trial.

The accused persons were charged for the offences committed by them. Accused No.4 Surjit Kuar, accused No.5 Gita Devi and accused No.7 Bhola Ram, were charged for an offence under Section 323/34 IPC. Accused No.1 Chiranji Lal, accused No.2 Gian Chand, accused No.3 Ramesh Chand, accused No.6 Sumran Singh alias Simru were charged for offences punishable under Sections 323, 325, 341, 504 IPC. All of the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined 9 witnesses and the statements of all the accused persons under Section 313 Cr.P.C, were also recorded.

After examining the material on record the Court below acquitted the accused of the charged offences for the reason that there were major contradictions in the statements of the witnesses which otherwise did not inspire confidence.

I have gone through the material on record. As per the case of the prosecution, the complainant and his father were beaten up by different persons at different places and timings. Gurnam Singh (PW-1) and Gita Ram (PW-2) were first beaten up at their residence by Vijay Kumar, Surjit Kaur accused No.4, Bhola accused No.7 and Gita Devi accused No.5. Vijay Kumar (not an accused) gave a blow on the head of the complainant PW-1. Gita Ram (PW-2) was again beaten up by accused No.4 and 5 at a time when they were on their way to report the

matter to the police at Paonta near Giripul. Accused No.1 Chiranjee Lal, accused No.2 Gian Chand, accused No.6 Sumran Singh alias Simran and accused No.3 Ramesh Chand obstructed their passage and started quarreling with the complainant, his father Gita Ram and brother Khem Chand. Accused No.3 also gave a blow of Danda on the head of PW-1. They were, however, rescued by Daleep from the cluches of the accused persons.

Out of the 9 witnesses examined by the prosecution, PW-1 and PW-2 have witnessed the first incident and PW-1, PW-2 and PW-3 have witnessed the second incident. PW-4, PW-5 and PW-7 who witnessed the recovery of the weapons of offence have been declared hostile. PW-6 Dr. Sanjay Sharma medically examined both PW-1 and PW-2. PW-8 H.C.Virender Kumar is the formal witness and has written the report Ext.PW-8/A and PW-9 is the Investigating Officer who conducted the investigation of the case.

As per the version of PW-1 it was Ved Parkash who had rescued him from the clutches of the accused at the time of the first incident. Prosecution story also refers to Daleep. Twice he was given blow with the Danda on the head once by Vijay Kumar and later by accused Ramesh Chand. In his cross-examination, he was confronted with his earlier statement recorded under Section 154 Cr.P.C., Ext.PW-8/A wherein it was not so recorded that Ved Parkash and Daleep had rescued him from the clutches of the accused persons. The fact that the accused had beaten him at his house is also missing. This witness has admitted that the complainant and accused Surjeet

Kaur are not on speaking terms and on her complaint the police had visited the site when the matter was compromised after he had admitted his guilt and apologized for the same. He is also not in speaking terms with the other accused persons. He has admitted that even he had abused the accused persons at the time of altercation. He has, however, denied the suggestion that accused No.7 Bhola was given a blow by his brother Khem Chand with a "safajang" (sharp edge weapon). He has deposed that his father suffered injuries on his legs and feet. Importantly, he has admitted that at the time when the parties were fighting against each other accused No.7 Bhola Ram was rescued by one Gurdas. This witness has admitted that the accused No.6, who is an employee with the irrigation department of the Government, on the date of the incident was on duty between 8 AM to 5 PM. He has further admitted that on the date of the incident accused No.1 Chiranji Lal, was at Singhpura in association with wrestling activity. According to him, Giripul where the second incident took place is about 7 to 8 kilometers away from their residence, the place of the Ist occurrence. He has also admitted that PW-3 Daleep had joined them at his residence and drove the tractor on way to the police station from there.

PW-2 has testified the version of PW-1 to the extent that it was Vijay Kumar who had hit him with a Danda on his head. Even he was beaten up by the accused person due to which he received minor injuries. Accused No.2 Gian Chand hit him with a Danda and he suffered injury on his arm. As per this

witness accused No.3 Ramesh Chand hit PW-1 with Danda. In cross-examination he could not state as to which of the accused persons were carrying Dandas shown to him in the Court. He admitted that in relation to the very same incident accused No.7 Bhola Ram had reported the matter against him and the complainant with police post at Singpura. Importantly, he has admitted that Bhola Ram was given beatings by him and the complainant at their residence due to which Bhola Ram suffered injuries and Gurdas had rescued Bhola Ram from them. This is corroborated by PW-1. He has admitted that if Bhola Ram had not been rescued they would have killed him. Bhola Ram had also got medical treatment. This witness has admitted that there is animosity between him and the accused persons and both are not on talking terms. According to him Daleep had met them at Giripul at about 4.40 P.M.

Daleep Singh (PW-3) has stated that he got PW-1 and PW-2 rescued from the clutches of the accused Gita Ram who gave beatings with a Danda to PW-1. In cross-examination, he has admitted that at the time of incident there were about 30 to 40 persons watching the incident. Both he and PW-1 have stated that the clothes were soiled with blood.

From the statement of these witnesses, it is clear that there is animosity between the complainant party and the accused persons. Matter was reported to the police by the accused No.4 and the complainant not only admitted his guilt but also apologized for the same. Complainant party had beaten accused No.7 Bhola Ram and even he had to be given medical

treatment. He had also lodged a complaint at police post Singhpura in relation to the very same incident.

Vijay Kumar who gave a blow of Danda to PW-1 has not been arrayed as an accused and no action has been taken against him. Even version of PW-1 to this extent stands corroborated by the version of PW-2. The fact that no action was taken against Vijay Kumar itself casts a doubt in the story of the prosecution. Similarly, Khem Chand, who is stated to have rescued PW-1 and PW-2 from the clutches of the accused persons has not been associated by the investigating agency nor examined as witness by the prosecution in the Court.

PW-3 is admittedly the real cousin of PW-1 and nephew of PW-2. Ved Parkash (PW-4) who is stated to have rescued PW-1 from the clutches of the accused in the morning at the time of the first incident was declared hostile and in his cross-examination there is nothing which would show the complicity of the accused in the commission of the offence. Shayam Lal (PW-5) and Charan Singh (PW-7) witnesses to the recovery of Dandas have also been declared hostile and in cross examination there is nothing which would show the complicity of the accused in the commission of the offence.

The contradiction in the statements of PW-1 and PW-2 with regard to the presence of PW-3 in my view is material. PW-1 has stated that PW-3 met them at his residence and drove the tractor on way to Paonta to lodge the complaint with the police but PW-2 has stated that PW-3 met them at about 4.40 P.M. at Giripul on their way to Paonta. Contradiction is

material. It makes the presence of PW-3 doubtful. The statements of PW-1 and PW-2 do not inspire confidence. Statements of PW-1 and PW-2 are not only contradictory but there are major improvements in their version and were confronted with the earlier statements recorded under Section 154 and 161 Cr.P.C. The presence of the accused No. 1 and 6 at the time and place of occurrence of the alleged incident itself is doubtful. PW-2 could not even identify as to which of the accused persons were carrying the Danda. Why no independent witness has been associated is also not clear from the record. They have admitted having given beatings to Bhola who also sustained injuries and reported the matter to the police at Singhpura. The instant complaint and case is just a counter blast and a defence to the same. Why the prosecution has not brought this fact on record has not been explained. This makes the prosecution story doubtful.

As per Rapat Rojnamcha (Daily Diary) Ext.PW-8/A bearing No.30 the matter was reported by PW-1 on 29th August, 1996 at about 3.00 A.M. Report is lodged by the complainant in the police station itself. However, the FIR (Ext.PW-9/D) was registered on 29th August at 1.50 P.M vide D.D.No.21. The time gap between the reporting of the incident and the recording of the FIR has not been explained at all. The Daily Diary number given on Ext.PW-8/A and Ext.PW9/D are totally different and it is not by a mistake. Ext.PW-9/A is the site plan.

Vijay Kumar who had given beatings to the complainant alongwith other accused persons is not an accused

person. No action at all was taken against him and why he was not arrayed as an accused is not clear from the record. Further, Khem Singh, brother of the complainant, who accompanied the complainant and his father on way to report the matter with the police station, Poanta was also not examined by the prosecution during trial. It has come through the version of PW-1 that police post Singhpura was at a distance of ½ kilometer from his residence wherein incident took place. There is no explanation as to why the matter was not reported at the said police post. The alleged incident took place at about 2.00 P.M on 28th August, 1996 and the matter could have been easily reported there instead the complainant party decided to go to a far off place to report the matter.

From Ext.PW-6/A and Ext.PW-6/B and the version of Dr. Sanjay Sharma the injuries suffered by PW-1 are simple in nature and that of PW-2 are simple and grievous. In cross examination he has stated that the same could be caused by fall. In my view this hypothesis is also borne out from the other material on record. Both the alleged incident took place on 28th August, 1996 at about 3.00 P.M and 4.30 P.M but the matter was reported to the police only at about 3.00 AM on 29th August, 1996 and the FIR was registered on 29th August, 1996 at about 1.50 PM. There is nothing on record to explain the delay. Particularly when PW-1 has admitted that Police Post Singhpura was at a distance of about ½ kilometer from their residence where the accused Bhola Ram had registered the complaint. Since the recovery of weapon of offence is not proved, it casts a

doubt in the prosecution story about the occurrence of the incident.

The case of the prosecution cannot be said to be truthful and the complicity of the accused to have committed the offence is not proved beyond reasonable doubt. The trial court has fully examined the material while arriving at its conclusion. There is no perversity in appreciation of the same. The appeal is accordingly dismissed and the bail bonds are discharged.

12th November, 2007 **(Sanjay Karol)**
TM **Judge.**